

INDEX OF EXHIBITS

Luis Pena and Jennifer Pena v. Ford Motor Company

1. Main Document (Notice of Removal) (Redacted)
2. Exhibit Index Exhibits A-E (Redacted)
3. Civil Cover Sheet (Redacted)
4. Supplemental Civil Cover Sheet (Redacted)

Exhibit 1

Amy M. Samberg (#013874)
 Collin T. Sult (#024039)
 SNELL & WILMER L.L.P.
 One South Church Avenue
 Suite 1500
 Tucson, AZ 85701-1630
 Telephone: (520) 882-1200
 Facsimile: (520) 884-1294
asamberg@swlaw.com
csult@swlaw.com
 Attorneys for Defendant Ford Motor Company

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

LUIS PENA AND JENNIFER PENA, both
 individually and on behalf of minors
K.P. and **A.P.**

Plaintiffs,

v.

FORD MOTOR COMPANY and DOES 1
 through 50, inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF CIVIL
 ACTION; VERIFICATION OF COLLIN
 T. SULT**

[Arizona Superior Court, County of Pima,
 Case No C20085761]

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA, TUCSON, ARIZONA**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendant Ford Motor Company ("Ford"), hereby removes the state court civil action originally commenced in the Superior Court of the State of Arizona, County of Pima, entitled *Luis Pena and Jennifer Pena, et al. v. Ford Motor Company, et al.*, Case No. C20085761 ("State Court Action") to this Court. In support of such removal, Ford states as follows:

A. The State Court Action was filed by plaintiffs Luis Pena, Jennifer Pena, **K.P.** and **A.P.** (collectively "the Penas") in the Pima County Superior Court on or about August 19, 2008, as Case No. C20085761. True and correct copies of the Complaint, Civil Summons, and Certificate of Compulsory Arbitration are attached hereto as **Exhibits A, B and C**

1 respectively.

2 B. On August 25, 2008, Ford's appointed agent was served with process in this
3 action. True and correct copies of the Service of Process Transmittal and Affidavit of Service are
4 attached hereto as **Exhibits D and E**. Accordingly, this Notice of Removal is filed within thirty
5 (30) days after receipt by Ford of a copy of the Complaint and is timely filed under 28 U.S.C.
6 § 1446(b).

7 C. The Penas are residents of the state of Arizona. Ford is incorporated in the state of
8 Delaware and has its principal place of business in the state of Michigan. Defendants Does 1 – 50
9 are fictitious entities whose citizenship "shall be disregarded" for purposes of removal under 28
10 U.S.C. § 1441 *et seq.*

11 D. The factual allegations set forth in the Complaint establish that the amount in
12 controversy exceeds the minimum jurisdictional amount of \$75,000, exclusive of interest and
13 costs, as provided under 28 U.S.C § 1332.

14 E. This is a civil action over which this Court has diversity jurisdiction pursuant to 28
15 U.S.C. § 1332. Further, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

16 F. Under 28 U.S.C. §§ 1446 and 1453, venue of this action is proper in the Court as
17 the district and division within which the State Court Action was brought.

18 G. A notification of the filing of the Notice of Removal to District Court has been
19 filed in the Superior Court of Pima County in the State of Arizona. Written notice of the filing of
20 this Notice of Removal is being delivered to all parties through counsel of record.

21 H. Copies of all known process, pleadings, and orders in the State Court Action are
22 attached hereto.

23 WHEREFORE, Ford respectfully requests that this Notice of Removal be deemed good
24 and sufficient and that the above-referenced action now pending in the Superior Court of Pima
25 County, State of Arizona, be removed to this Court.

26 ...

27 ...

28

1 DATED this 15th day of September, 2008.

2 SNELL & WILMER L.L.P.

3
4 By: s/ Collin T. Sult

5 Amy M. Samberg

6 Collin T. Sult

7 One South Church Avenue

8 Suite 1500

9 Tucson, AZ 85701-1630

10 Attorneys for Defendant Ford Motor Company

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28
SNELL & WILMER L.L.P.
LAW OFFICES
One South Church Avenue, Suite 1500
Tucson, Arizona 85701-1630
(520) 882-1200

VERIFICATION OF COLLIN T. SULT

I, Collin T. Sult, verify as follows:

1. I am an active member in good standing of the State Bar of Arizona and an associate with the law firm of Snell & Wilmer, LLP, counsel of record for Defendant Ford Motor Company. I have firsthand knowledge of the matters set forth herein. I submit this verification pursuant to Local Rule Civ. 3.7 and pursuant to Federal Rule of Civil Procedure 11.

2. Attached as Exhibits A, B, C, D and E are true and complete copies of all pleadings and other documents filed in the state court civil action originally commenced in the Superior Court of the State of Arizona in and for the County of Pima, entitled *Luis Pena and Jennifer Pena, et al. v. Ford Motor Company, et al.*, Case No. C20085761.

I verify that the foregoing is true and correct.

Executed this 15th day of September, 2008, at Tucson, Arizona.

SNELL & WILMER L.L.P.

By: s/ Collin T. Sult

Collin T. Sult
One South Church Avenue
Suite 1500
Tucson, AZ 85701-1630
Attorneys for Defendant Ford Motor Company

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2008, I electronically transmitted the attached document to the Clerk's office using the ECF System for filing.

I further certify that on September 15, 2008, I served the attached document by U.S. mail on the following:

Jeffrey Jacobson
THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC
7473 E. Broadway Blvd.
Tucson, Arizona 85710
Attorneys for Plaintiffs

John H. Gomez
THE GOMEZ LAW FIRM
625 Broadway, Suite 600
San Diego, California 92101

John C. Ramsey
Ron Simon
SIMON & LUKE, LLP
2929 Allen Parkway, 42nd Floor
Houston, Texas 77019

s/Lynn Salcido

9108883.1

Exhibit 2

INDEX OF EXHIBITS

Luis Pena and Jennifer Pena v. Ford Motor Company

INDEX OF EXHIBITS TO NOTICE OF REMOVAL ACTION

- A. Complaint
- B. Civil Summons
- C. Certificate of Compulsory Arbitration
- D. Service of Process Transmittal
- E. Affidavit of Service

Exhibit A

Jeffrey Jacobson (AZ Bar No. 019502)
 THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC
 7473 E. Broadway Blvd.
 Tucson, Arizona 85710
 Telephone: 520-751-7811
 Facsimile: 520-751-7805
 Email: jeff@jhj-law.com
 Attorneys for Plaintiffs

John H. Gomez (CA. Bar No. 171485)
 THE GOMEZ LAW FIRM
 625 Broadway, Suite 600
 San Diego, California 92101
 Telephone: (619) 237-3490
 Fax: (619) 237-3496
 Email: john@thegomezfirm.com
Pro Hac Vice Pending

John C. Ramsey (TX. Bar No. 24027762)
 Ron Simon (TX. Bar No. 00788421)
 SIMON & LUKE, LLP
 2929 Allen Parkway, 42nd Floor
 Houston, Texas 77019
 Telephone: (713) 335-4900
 Fax: (713) 335-4949
 Email: johnramsey@simonluke.com
Pro Hac Vice Pending

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF PIMA

LUIS PENA AND JENNIFER PENA, both
 individually and on behalf of minors

K. P. and A. P.

Plaintiffs,

v.

FORD MOTOR COMPANY and DOES 1
 through 50, inclusive,

Defendants.

Case No.:

C20085761

COMPLAINT

JAVIER CHON-LOPEZ

For their Complaint against Defendants, Plaintiffs Luis Pena and Jennifer Pena allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Luis Pena lives in Pinal County, Arizona.
2. Jennifer Pena is the spouse of Luis Pena and resides with her husband in Pinal County, Arizona.
3. A. P. is a minor born , 1995 and the natural daughter of Jennifer Pena and Luis Pena. She resides with her parents in Pinal County, Arizona.
4. K. P. is a minor born 2001 and the natural daughter of Luis Pena. She resides in Philadelphia, Pennsylvania.
5. Defendant Ford Motor Company ("Ford") is a Michigan corporation with its principal place of business in Dearborn, Michigan. Ford is licensed and authorized to conduct business in Arizona, and does conduct such business through agents and/or representatives in Arizona. Ford may be served with process through its registered agent, CT Corporation System, 2394 East Camelback Road, Phoenix, Maricopa County, Arizona.
6. The true names and capacities of the Defendants named herein as DOES 1 through 50, inclusive, whether individual, corporate, governmental, associate or otherwise, are unknown to Plaintiff who therefore sues such Defendants by fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
7. Jurisdiction and venue are proper in this Court. A.R.S. § 12-401.

FACTS

8. On or about October 18, 2007, Luis Pena, an agent with the United States Border Patrol, was on duty in or near Casa Grande, Arizona. He was traveling westbound on Federal Route 20 in his government-issued vehicle, a 2003 Ford F-250 XL Super Duty truck, V.I.N. 1FTNX21L83EC87679 (the "F-250"). Federal Route 20 on the Tohono O'Odham Nation outside of Sells, Arizona, is in Pima County. As Agent Pena was responding to a narcotics call, the vehicle drifted to the right and began to leave the paved portion of the roadway. Agent Pena attempted to correct his vehicle's path by steering to the left. The vehicle immediately

1 lost control into a sideways yaw, left the roadway and rolled at slow speeds. The F-250
2 eventually came to a rest on its tires adjacent to the road.

3 9. During the roll sequence, the F-250's weak roof crushed down onto Agent Pena,
4 trapping him in the driver's seat.

5 10. Agent Pena was wearing his seat belt at the time of the incident.

6 11. Agent Pena suffered severe injuries as a result of the rollover. Specifically, he suffered
7 trauma and fractures to multiple levels of his cervical spine, rendering him a quadriplegic for
8 the rest of his life. Agent Pena was 30 years old at the time of the incident.

9 12. Ford and Does 1-50 designed, manufactured, assembled, tested, sold, and placed the F-
10 250, and its component part into the stream of commerce.

11
12 **STRICT LIABILITY**
(AGAINST ALL DEFENDANTS)

13 13. At all times, Ford and Does 1-50 were in the business of designing, manufacturing, and
14 marketing pickup trucks.

15 14. The F-250 was defective and unreasonably dangerous at the time it was designed,
16 manufactured, and marketed.

17 15. Specifically, Ford and Does 1-50 are strictly liable for the defective F-250 in one or
18 more of the following ways:

- 19 a. The vehicle is defective in that it was not designed to provide reasonable and
20 necessary occupant protection in the event of a rollover;
- 21 b. The vehicle is defective in that the design of the track width, wheelbase and
22 vertical center-of-gravity height, create an unreasonable risk of rollover given
23 the uses for which the vehicle was marketed;
- 24 c. The defects in the design of the track width, wheelbase and vertical center-of-
25 gravity height create an unreasonable and extreme risk of rollover that is both
26 beyond the expectations of the consumer and create a risk that far outweighs any
27 benefit associated with the design;
- 28 d. The vehicle is defective because Ford chose not to equip the F-250 with
Electronic Stability Control ("ESC"), which would have prevented Agent Pena's
rollover and resulting injuries;

1 e. The vehicle is defective in that the roof and its supporting pillars fail to afford
2 the occupant sufficient protection during a rollover; and

3 f. Ford failed to adequately warn or instruct consumers of the dangers associated
4 with incidents of rollover and roof crush on its vehicle.

5 16. The unreasonably dangerous nature of the above-noted defects creates a high
6 probability that the F-250 will, and does, rollover, resulting in roof crush and loss of human life
7 and/or catastrophic personal injuries. The defect creates an emergency situation (unexpected
8 rollover) and jeopardizes the life of the driver and his passengers.

9 17. The above-noted defects were a producing and proximate cause of the incident and
10 resulting injuries and damages.

11 18. Safer alternative designs were both economically and technologically feasible at the
12 time the F-250 left Ford's control; yet Ford chose not to use the safer alternative designs.

13 19. Ford and Does 1-50 are therefore strictly liable for designing, manufacturing,
14 marketing, testing, and/or placing defective and unreasonably dangerous products into the
15 stream of commerce.

16 **NEGLIGENCE**
17 **(AGAINST ALL DEFENDANTS)**

18 20. Ford and Does 1-50 owed Plaintiffs a duty of ordinary care in the design, manufacture,
19 production, testing, and distribution of the F-250. Further, Defendants owed Plaintiffs the duty
20 of warning or instructing Plaintiffs of potentially hazardous or life-threatening conditions with
21 respect to this product.

22 21. Ford breached its duties in one or more of the following ways:

23 a. Negligently designing the vehicle from a handling and stability standpoint;

24 b. Negligently designing a vehicle with poor rollover resistance;

25
26 c. Negligently designing a vehicle with poor occupant protection in the event of a
27 rollover;

28 d. Failing to test the vehicle to minimize the risk of rollover;

- e. Failing to equip the vehicle with ESC;
- f. Failing to test the vehicle to ensure proper occupant protection in the event of a rollover;
- g. Failing to adequately train and inform the United States Border Patrol of the problems associated with rollovers and roof crush;
- h. Failing to disclose known problems and defects to the general public;
- i. Negligently marketing the vehicle as a safe and stable vehicle;
- j. Failing to comply with industry standards in the automotive industry by supplying a vehicle prone to rollover with poor occupant protection;
- k. Failing to recall the rollover-prone truck, or alternatively, retrofitting the vehicle to enhance safety; and
- l. Negligently concealing known dangers associated with the roof collapsing as a result of a rollover.

22. The foregoing negligent acts were a proximate cause of the crash and resulting injuries and damages.

23. All dangers associated with the vehicle were reasonably foreseeable and/or scientifically discoverable at the time of the incident in question.

DAMAGES

24. As a proximate and producing result of the acts and omissions outlined above, Plaintiffs have suffered, and will continue to suffer in the future, damages within the jurisdictional limits of this Court. These damages include: pain and suffering; mental anguish; physical disfigurement; physical impairment; lost earnings; medical, pharmaceutical, and hospital expenses; loss of consortium; loss of companionship and society; loss of services; loss of property; as well as other economic and non-economic damages..

EXEMPLARY DAMAGES (FORD MOTOR COMPANY ONLY)

25. Plaintiff incorporates the allegations set forth in paragraphs 1-25 of the Complaint. Plaintiff further alleges, as to Defendant Ford Motor Company as follows:

1 26. The conduct of Ford Motor Company was done with fraud, malice and oppression, and
2 with the willful and conscious disregard of Plaintiffs' rights and safety and the rights and safety
3 of others, thereby entitling the Plaintiffs to damages in an amount sufficient to punish or make
4 an example of Ford Motor Company.

5 27. Furthermore, Ford Motor Company, through its officers, directors and/or managing
6 agents, authorized, directed, conducted and ratified each of the following acts, and engaged in
7 the following conduct:

8 a. In its "1965-66 Roof Collapse Evaluation" study, Ford conducted drop-testing
9 on the roofs of a number of its vehicles to determine whether they would "incur[] subjectively
10 unacceptable collapse" of the roof into the passenger compartment. "Subjectively unacceptable
11 collapse" of the roofs was defined as encroachment of the roof "upon a 30" rod mounted
12 vertically in the front occupant position with its end at the "H" point with seat full forward." In
13 other words, Ford recognized roof collapse that left less than 30 inches of "survival space"
14 between the "H" point and the roof was "subjectively unacceptable."

15 b. A second purpose of Ford's "1965-66 Roof Collapse Evaluation" was to evaluate
16 a roof crush criteria proposed by the SAE Automotive Safety Committee whereby vehicles
17 dropped on their roof from a height of 2 feet would not demonstrate the "subjectively
18 unacceptable" roof collapse defined above as encroachment of the roof to within 30 inches of
19 the "H" point.

20 As part of the study, Ford dropped a number of its vehicles on their roofs from both 2
21 and 3 feet. Every vehicle demonstrated "subjectively unacceptable" roof collapse when
22 dropped from heights of 2 and 3 feet.

23 d. In 1967, Ford did a "safety benefit/cost summary" in which it attempted to
24 determine the cost of human lives and serious injuries versus the cost of improving its vehicles
25 to prevent deaths and serious injuries. In that study, Ford concluded that "totally effective
26 rollover protection cannot be easily justified if it costs more than \$26 per car."
27
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1 e. By that time, Ford knew that the "incidence of roof impact [was] significant" in
2 crashes involving its vehicles. Specifically, and as part of a 1968 roof strength study, Ford
3 concluded that:

4 People are injured by roof collapse. The total number of
5 nationwide deaths and injuries cannot be estimated but it is a
6 significant number.

7 In other words, Ford knew, and at all times relevant to this lawsuit has known, that a
8 "significant" portion of the vehicles that it sold to the consuming public would be involved in
9 crashes where those cars rolled over or otherwise ended up on their roofs.

10 f. The same 1968 roof strength study confirms the "subjectively unacceptable"
11 roof collapse criteria recognized in Ford's 1965-66 Roof Collapse Evaluation and further
12 recognizes that "roof intrusion to 29.4 inches above the 'H' point will not interfere with the
13 "depressed head" space of 99% of vehicle occupants."

14 g. The 1968 study also predicts that the use of 3-point seatbelts will increase,
15 leaving occupants more vulnerable to roof crush injuries, and concludes that, for that reason,
16 roof strength must be improved:

17 It is obvious that occupants that are restrained in upright positions
18 are more susceptible to injury from a collapsing roof than
19 unrestrained occupants who are free to tumble about the interior
20 of the vehicle. It seems unjust to penalize people wearing
effective restraint systems by exposing to more severe rollover
injuries than they might expect with no restraints.

21 h. The 1968 study concluded that Ford needed to change the design of its vehicles
22 to increase their roof strength to withstand "loading of twice the weight of the vehicle."

23 i. On February 1, 1984, Fords President publicly issued a safety directive that
24 required the company to design its products "not only to meet or exceed all applicable laws and
25 regulations, but also to advance the state-of-the-art wherever practicable." The directive went on
26 to say that "in evaluating potential advances in the state-of-the-art in product safety, the issue of
27 cost should not preclude consideration of possible alternatives." In a policy letter three years
28 later, he reiterated the same policy, that cost should not preclude product safety advances and

1 state-of-the-art product safety.

2 j. At the same time that the President issued his policy statement publicly,
3 privately he learned that with the increase in seat belt usage, as predicted by the 1967 study,
4 occupants would be retained in vehicles during rollovers and thus the focus on occupant
5 protection needed to shift to the roof structure "to minimize the risk of restrained occupant
6 injury." He was also warned that "to reduce the probability of roof crush," Ford needed to
7 "establish a guideline that exhibits criteria proportionally better than the 216 requirements,
8 particularly for ductile roof materials."

9 k. Soon thereafter, alarmed by "deteriorating car profits," the Chairman of the
10 Board officially renounced Ford's public safety policy, and instead, privately ordered a
11 reduction in costs "related to items designed to achieve or exceed compliance with regulatory
12 requirements to as low a level as possible to maximize our future pricing flexibility *vis-a-vis*
13 competition." It was decided by the Chairman of the Board, the Vice Chairman and the
14 Controller that "all efforts to improve [profit] margins should be pursued ... and should be
15 central to our thinking on all programs"

16 l. Consistent with that new profit-driven policy to reduce spending on safety to the
17 minimal level required by law, Ford not only designed the roofs of its vehicles only to meet
18 FMVSS 216's antiquated, inadequate and unrealistic roof crush test, it actively resisted any and
19 all efforts to strengthen the requirements of that standard.

20 m. Ford likewise tested the roof strength of its passenger vehicles, only to comply
21 with FMVSS 216's antiquated, inadequate and unrealistic roof crush standards. At no time did
22 Ford conduct drop testing, dynamic rollover testing, or any other even remotely "real world"
23 tests of the Subject Ford F250 to ensure that its roof would not experience "subjectively
24 unacceptable" collapse in the event of a rollover crash, thereby leaving inadequate "survival
25 space" to protect occupants like Plaintiff from serious injury or death. Ford failed to perform
26 that necessary testing to save both the costs of improving roof structure and testing itself.
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1 n. The roof of the Ford F250 fails Ford's internal requirement that it withstand
2 "loading of twice the weight of the vehicle." Indeed, Ford engineers know that Ford hates to
3 unnecessarily crash vehicles as part of testing.

4 o. As a result, and when the F250 was involved in a foreseeable rollover crash, its
5 roof collapsed substantially more than 4 inches and otherwise well beyond the level which Ford
6 itself had previously recognized as "subjectively unacceptable", leaving Plaintiff, who was
7 trapped upright by his proper use of a 3-point seatbelt with virtually no "survival space"
8 whatsoever, and causing him permanent, catastrophic and crippling injuries.

9 p. Ford has been on notice for decades that the reduced track width combined
10 with a high center-of-gravity produces a hazardous combination that often results in
11 catastrophic rollover. Moreover, Ford has known that anti-rollover technology such as ESC
12 prevents a vehicle from rolling over. Consequently, auto manufacturers, including Ford, have
13 installed ESC on many makes and models of their vehicles for many years.

14 28. 80,000 Americans each year are involved in a rollover. Over 10,000 die from injuries
15 associated with rollovers. Ford has known for several decades that when a vehicle rolls over, a
16 weak roof will kill or catastrophically injure a vehicle's occupants. Simple, inexpensive
17 reinforcements to the roof pillars and roof rails prevent the roof from encroaching into the
18 occupant space. Ford is intimately aware of these safer designs because Ford's engineers
19 design, manufacture, and test vehicles such as the Volvo XC90 that have a far superior roof
20 than vehicles sold under the "Ford" brand, such as agent Pena's Ford F-250. Had Ford
21 implemented these safer designs, it would have saved countless consumers from falling victim
22 to the perils of roof crush. Unfortunately, Ford decided long ago to turn a blind eye to this
23 epidemic and ignore the recommendations of others within the industry and the voices of the
24 victims.

25 29. Because Ford was on notice of prior injuries and deaths associated with these types of
26 failures and failed to act accordingly, Plaintiffs now seek exemplary damages. Ford's conduct
27 as described above constitutes acts and/or omissions which, when viewed objectively from
28

1 Ford's standpoint at the time of the occurrence, involved an extreme degree of risk, considering
2 the probability and magnitude of the potential harm to others. Defendant had actual, subjective
3 awareness of the risk involved, but nevertheless proceeded with conscious indifference to the
4 rights, safety, and welfare of others.

5 30. The conduct of Ford Motor Company, as set forth above, constitutes fraud and/or
6 malice and oppression. Therefore, Plaintiff seeks punitive or exemplary damages in an amount
7 sufficient to punish or set an example of Ford Motor Company.

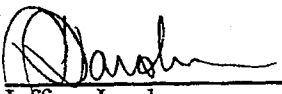
8 31. Plaintiffs request a trial by jury and hereby tender the applicable fee.

9 WHEREFORE, Plaintiffs pray that Ford be cited to appear and answer and that upon
10 trial of this matter, Plaintiffs be awarded the following:

- 11 a. Past and future actual damages;
12 b. Exemplary damages;
13 c. Fees and costs of court;
14 d. Pre- and post-judgment interest at the highest rate allowed by law; and
15 f. For such other and further relief as this Court may deem just and proper.
16

17 Dated: August 19, 2008.

18 THE LAW OFFICE OF
19 JEFFREY H. JACOBSON, PLLC

20 By: 
21 Jeffrey Jacobson
22 Attorneys for Plaintiffs
23

24 ORIGINAL of the foregoing filed with:

25 Clerk of the Court
26 Pima County Superior Court
27 110 West Congress Street
28 Tucson, AZ 85701

Exhibit B

8-25-08
12:25 PM

Jeffrey Jacobson (AZ Bar No. 019502)
THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC
7473 E. Broadway Blvd.
Tucson, Arizona 85710
Telephone: 520-751-7811
Facsimile: 520-751-7805
Email: jeff@jhj-law.com
Attorneys for Plaintiffs

John H. Gomez (CA. Bar No. 171485)
THE GOMEZ LAW FIRM
625 Broadway, Suite 600
San Diego, California 92101
Telephone: (619) 237-3490
Fax: (619) 237-3496
Email: john@thegomezfirm.com
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John C. Ramsey (TX. Bar No. 24027762)
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SIMON & LUKE, LLP
2929 Allen Parkway, 42nd Floor
Houston, Texas 77019
Telephone: (713) 335-4900
Fax: (713) 335-4949
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

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individually and on behalf of minors

K. P. and A. P.

Plaintiffs,

v.

FORD MOTOR COMPANY and DOES 1
through 50, inclusive,

Defendants.

) Case No.: **C20085761**

) CIVIL SUMMONS

) **JAVIER CHON-LOPEZ**

THE STATE OF ARIZONA to the Defendants, FORD MOTOR COMPANY:

I. A lawsuit has been filed against you.

- 1 II. If you do not want a Judgment taken against you for the relief demanded in the
2 accompanying Complaint, you must file a Response in writing in the Office of
3 the Clerk of the Pima County Superior Court, 110 West Congress, Tucson,
4 Arizona 85701, accompanied with the necessary filing fee. A copy of the
5 Response must also be mailed to the attorney whose names appear above.
- 6 III. The Response must be filed within **TWENTY DAYS**, exclusive of the date of
7 service, if served within the State of Arizona, or within **THIRTY DAYS**,
8 exclusive of the date of service, if served outside the State of Arizona.
- 9 IV. This is a legal document. If you do not understand its consequences, you should
10 seek the advice of an attorney.
- 11 V. Requests for reasonable accommodation for persons with disabilities must be
12 made to the division assigned to the case by parties at least three (3) judicial
13 days in advance of a scheduled court proceeding.

14 WITNESS MY HAND AND SEAL of the Pima County Superior Court.

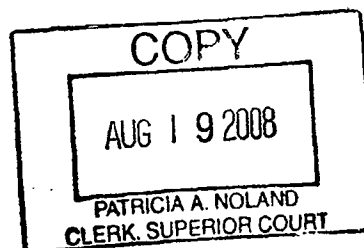
15 DATED: AUG 19 2008

16 Clerk of the Superior Court

17 **PATRICIA A. NOLAND**

18 By: 

Exhibit C



Jeffrey Jacobson (AZ Bar No. 019502)
 THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC
 7473 E. Broadway Blvd.
 Tucson, Arizona 85710
 Telephone: 520-751-7811
 Facsimile: 520-751-7805
 Email: jeff@jhj-law.com
 Attorneys for Plaintiffs

John H. Gomez (CA. Bar No. 171485)
 THE GOMEZ LAW FIRM
 625 Broadway, Suite 600
 San Diego, California 92101
 Telephone: (619) 237-3490
 Fax: (619) 237-3496
 Email: john@thegomezfirm.com
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 SIMON & LUKE, LLP
 2929 Allen Parkway, 42nd Floor
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CERTIFICATE OF COMPULSORY
 ARBITRATION

JAVIER CHON-LOPEZ

Undersigned counsel certifies that the largest award sought by the complainant,
 including punitive damages, but excluding interest, attorneys' fees, and costs, exceeds the

limits set by Local Rule for compulsory arbitration. See Rule 72(b), Ariz. R. Civ. Proc. This case is not subject to compulsory arbitration.

Dated: August 19, 2008.

THE LAW OFFICE OF
JEFFREY H. JACOBSON, PLLC

By: 

Jeffrey Jacobson
Attorneys for Plaintiffs

ORIGINAL of the foregoing filed with:

Clerk of the Court
Pima County Superior Court
110 West Congress Street
Tucson, AZ 85701

Exhibit D

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

08/25/2008

CT Log Number 513784883



TO: Chris Dzbanski
Ford Motor Company
Three Parklane Blvd., Ste.1400 West
Dearborn, MI 48126-

RE: Process Served in Arizona

FOR: Ford Motor Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Luis Pena and Jennifer Pena, etc., Pltfs. vs. Ford Motor Company, et al., Dfts.
DOCUMENT(S) SERVED:	Summons, Complaint, Certificate
COURT/AGENCY:	Superior Court, Pima County, AZ Case # C20085761
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Defective 2003 Ford F-250 XL Super Duty Truck VIN-1FTNX21L83EC87679 resulting in roll over causing personal injuries
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Phoenix, AZ
DATE AND HOUR OF SERVICE:	By Process Server on 08/25/2008 at 12:25
APPEARANCE OR ANSWER DUE:	Within 10 days, exclusive of the date of service
ATTORNEY(S) / SENDER(S):	Jeffrey Jacobson The Law Office of Jeffrey H. Jacobson, PLLC 7473 E. Broadway Blvd. Tucson, AZ 85710 520-751-7811
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 791126281771 Image SOP - Page(s): 15 Email Notification, Chris Dzbanski CDZBANSK@FORD.COM
SIGNED:	C T Corporation System
PER:	Loren Bates
ADDRESS:	2394 E. Camelback Road Phoenix, AZ 85016
TELEPHONE:	602-277-4792

Page 1 of 1 / DL

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit E

08 SEP -2 PM 12:58

HAWKINS and E-Z MESSENGER
10 W. Madison Street
Phoenix, AZ 85003
(602) 258-8081 FAX: (602) 258-8864

BY: E. BRADFORD
DEPUTY

IN THE ARIZONA SUPERIOR COURT
STATE OF ARIZONA COUNTY OF PIMA

LUIS PENA AND JENNIFER PENA
VS
FORD MOTOR COMPANY

CASE NO. C2008 5761
JUDGE CHON-LOPEZ

STATE OF ARIZONA)
MARICOPA COUNTY)

AFFIDAVIT OF SERVICE

THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and an Officer of the Court. On 08/22/08 I received the CIVIL SUMMONS; COMPLAINT; CERTIFICATE OF COMPULSORY ARBITRATION

from THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC and by JEFFREY JACOBSON in each instance I personally served a copy of each document listed above upon: FORD MOTOR COMPANY BY SERVICE UPON ITS STATUTORY AGENT C.T CORPORATION SYSTEM on 08/25/08 at 12:25 pm at 2394 E. CAMELBACK RD. PHOENIX, AZ 85016 MARICOPA COUNTY in the manner shown below:

by leaving true copy(ies) of the above documents with MOLLY MARTINEZ, PROCESS SPECIALIST, STATED AUTHORIZED TO ACCEPT.

Description: HISP, Female, Approx. 45 yrs. of age, 4' 6" tall, Weighing 130lbs., BROWN Hair,

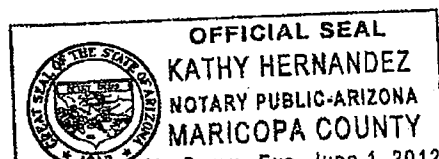
DON A. FOUTZ, ACPS Affiant
Sworn to before me the Aug 27, 2008

Kathy Hernandez
Kathy Hernandez Notary

My Commission expires: 06/01/2012

SERVICE OF PROCESS	\$	16.00
MILES 8	\$	19.20
SERVICE CHARGE	\$	5.00
AFFIDAVIT PREP/NOTARY	\$	10.00
TOTAL	\$	50.20

1452832 17000
ORIGINAL



Jeffrey Jacobson (AZ Bar No. 019502)
 THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC
 7473 E. Broadway Blvd.
 Tucson, Arizona 85710
 Telephone: 520-751-7811
 Facsimile: 520-751-7805
 Email: jeff@jhj-law.com
 Attorneys for Plaintiffs

John H. Gomez (CA. Bar No. 171485)
 THE GOMEZ LAW FIRM
 625 Broadway, Suite 600
 San Diego, California 92101
 Telephone: (619) 237-3490
 Fax: (619) 237-3496
 Email: john@thegomezfirm.com
Pro Hac Vice Pending

John C. Ramsey (TX. Bar No. 24027762)
 Ron Simon (TX. Bar No. 00788421)
 SIMON & LUKE, LLP
 2929 Allen Parkway, 42nd Floor
 Houston, Texas 77019
 Telephone: (713) 335-4900
 Fax: (713) 335-4949
 Email: johnramsey@simonluke.com
Pro Hac Vice Pending

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF PIMA

LUIS PENA AND JENNIFER PENA, both
 individually and on behalf of minors

K. P. and A. P.

Plaintiffs,

v.

FORD MOTOR COMPANY and DOES 1
 through 50, inclusive,

Defendants.

Case No.: **C20085761**

CIVIL SUMMONS

JAVIER CHON-LOPEZ

THE STATE OF ARIZONA to the Defendants, FORD MOTOR COMPANY:

I. A lawsuit has been filed against you.

- 1 II. If you do not want a Judgment taken against you for the relief demanded in the
2 accompanying Complaint, you must file a Response in writing in the Office of
3 the Clerk of the Pima County Superior Court, 110 West Congress, Tucson,
4 Arizona 85701, accompanied with the necessary filing fee. A copy of the
5 Response must also be mailed to the attorney whose names appear above.
6
7 III. The Response must be filed within **TWENTY DAYS**, exclusive of the date of
8 service, if served within the State of Arizona, or within **THIRTY DAYS**,
9 exclusive of the date of service, if served outside the State of Arizona.
10
11 IV. This is a legal document. If you do not understand its consequences, you should
12 seek the advice of an attorney.
13
14 V. Requests for reasonable accommodation for persons with disabilities must be
15 made to the division assigned to the case by parties at least three (3) judicial
16 days in advance of a scheduled court proceeding.

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WITNESS MY HAND AND SEAL of the Pima County Superior Court.

DATED: **AUG 19 2008**

Clerk of the Superior Court

PATRICIA A. NOLAND

By: 

Exhibit 3

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

Luis Pena and Jennifer Pena, both individually and on behalf of minors
K.P. and A.P.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SEE ATTACHMENT

DEFENDANTS

Ford Motor Company

County of Residence of First Listed Defendant WAYNE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

AMY SAMBERG AND COLLIN SULT
SNELL & WILMER L.L.P.
1 S. CHURCH STE. 1500
TUCSON, AZ 85701

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box For Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities — Employment <input type="checkbox"/> 446 Amer. w/Disabilities — Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 436 Habeas Corpus — Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities / Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

§28 U.S.C. 1332

Brief description of cause: Motor vehicle, product liability, personal injury

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P.23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/15/08

SIGNATURE OF ATTORNEY OF RECORD

S/COLLIN T. SULT

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. Plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Jeffrey Jacobson
THE LAW OFFICE OF JEFFREY H. JACOBSON, PLLC
7473 E. Broadway Blvd.
Tucson, Arizona 85710
Telephone: 520-751-7805

John H. Gomez
THE GOMEZ LAW FIRM
625 Broadway, Suite 600
San Diego, California 92101
Telephone: 619-237-3490
Pro Hac Vice Pending

John C. Ramsey
Ron Simon
SIMON & LUKE, LLP
2929 Allen Parkway, 42nd Floor
Houston, Texas 77019
Telephone: 713-335-4900
Pro Hac Vice Pending

Exhibit 4

**SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time
the case is filed in the United States District Clerk's Office.

Additional sheets may be used as necessary.

1. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
Luis Pena, Jennifer Pena, K. P. and A. P.	Plaintiffs	Jeffrey Jacobson John Gomez John C. Ramsey
Ford Motor Company	Defendant	Amy Samberg Collin Sult
Does 1-50	Defendants	N/A

2. Jury Demand:

Was a Jury Demand made in another jurisdiction? ☒ Yes ☐ No
If "Yes," by which party and on what date?

Plaintiffs August 19, 2008

3. Answer:

Was an Answer made in another jurisdiction? ☐ Yes ☒ No
If "Yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

<u>Party</u>	<u>Date Served</u>	<u>Method of Service</u>
Ford Motor Company	8/25/08	CT Corporation System Via Personal Service

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>
--------------	--------------------------

N/A

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>
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N/A

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Reason for Change</u>
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Plaintiffs	Motor Vehicle, Product Liability, Personal Injury
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Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.